

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

JOSE LUIS PENA-CEPEDA

VS.

CRIMINAL ACTION NO. 3:04CR164TSL-JSC
CIVIL ACTION NO. 3:06cv28TSL-JCS

UNITED STATES OF AMERICA

ORDER

This cause is before the court on the motions of Pena-Cepeda to vacate, set aside, adjust or correct sentence pursuant to 28 U.S.C § 2241 and 18 U.S.C. § 3582.

To the extent Pena-Cepeda seeks habeas corpus relief pursuant to § 2241, the motion will be denied because the court lacks jurisdiction as Pena-Cepeda is not located in this district. See Lee v. Wetzel, 244 F.3d 370, 373 (5th Cir. 2001) ("[W]e have firmly stated that the district of incarceration is the only district that has jurisdiction to entertain a defendant's § 2241 petition"). Further, to the extent that he seeks relief under § 3582 and Rule 35 of the Federal Rules of Criminal Procedure, this motion is due to be denied as the government has not moved for relief. Fed. R. Crim. P. 35(b) ("[O]n government's motion, court may reduce sentence on account of defendant's "substantial assistance.").

It is therefore ordered that Pena-Cepeda's motions to vacate, set aside, adjust or correct sentence pursuant to 28 U.S.C § 2241 and 18 U.S.C. § 3582 are denied.

ORDERED this 21st day of November, 2006.

/s/ Tom S. Lee

UNITED STATES DISTRICT JUDGE